IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM PANUSKI,	§	
	§	No. 88, 2010
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. No. 0903002643
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 11, 2010
Decided: August 30, 2010

Before **STEELE,** Chief Justice**, HOLLAND** and **BERGER,** Justices.

O R D E R

This 30th day of August, 2010, upon consideration of the briefs of the parties, it appears to the Court that:

1) William Panuski appeals from his conviction, following a guilty plea, of two counts of dealing in child pornography. Panuski argues that: 1) his conviction violated the Double Jeopardy Clauses of the United States and Delaware Constitutions; and 2) because the indictment was not specific, he should have been sentenced for the crime of possession of child pornography rather than the crime of dealing in child pornography. Panuski's arguments lack merit.

2) Because Panuski pled guilty, the relevant facts are drawn from the Affidavit of Probable Cause used to obtain the warrant to search Panuski's home. In January 2009, Lt. Robert Moses, of the Delaware State Police High Technology Crimes Unit, identified a computer in the Wilmington, Delaware area that was using a peer-to-peer file sharing network known to contain child pornography. After connecting to that network, Moses identified more than 20 hard core child sexual abuse videos available for uploading at a particular IP address. Comcast Communications Company identified Panuski as the subscriber with that IP address.

3) The police seized multiple computers and other digital media at Panuski's house. Analysis of those computers revealed hundreds of pictures and videos, including videos of adult males repeatedly raping 2 and 3 year-old girls, a male raping an infant, and the anal rape of a young child. The State indicted Panuski on 29 counts of dealing in child pornography in violation of 11 *Del. C.* § 1109 (4). Each count involved a different video of child pornography, although the indictment did not identify the specific videos.

4) Panuski entered into a plea bargain whereby he pled guilty to two counts of dealing in child pornography and the State entered a *nolle prosequi* for the remaining 27 counts. After the trial court accepted the plea, but before sentencing, Panuski filed a Motion to Merge and/or Downgrade Counts for Sentencing. He argued that, because

the indictment did not specify whether Panuski dealt in child pornography or simply possessed it, he should be sentenced for violation of 11 *Del. C.* § 1111 – possession of child pornography. The trial court rejected that argument, and sentenced Panuski to the minimum mandatory term of 2 years at Level V for each count.

5) "Double jeopardy, as a constitutional principle, provides the following protections: (1) against successive prosecutions; (2) against multiple charges under *separate statutes*; and (3) against being charged multiple times under the *same statute.*"[1] Panuski appears to be arguing that 11 *Del. C.* § 1109 (4) and 11 *Del. C.* § 1111 both punish the same wrongdoing – possession of child pornography – and that convictions under both statutes would violate double jeopardy. The problem with this argument is that Panuski was not charged with the same offense under two different statutes. He was charged with multiple offenses under only one statute – § 1109(4).

6) Alternatively, Panuski argues that the indictment did not specify what he did other than possess child pornography. Accordingly, he should have been sentenced under § 1111, not § 1109 (4). This argument totally overlooks the fact that he was charged with violations of § 1109 (4) for dealing in child pornography, not just possessing it. If he wanted to contest whether he committed the crime of dealing in

[1]*Williams v. State*, 796 A.2d 1281, 1285 (Del. 2002) (Internal citations omitted; emphasis in original.).

child pornography, he was free to do so at trial. Instead, he accepted a generous plea bargain that allowed him to plead guilty to only two of the 29 counts against him. Moreover, the trial court told Panuski that he could withdraw his guilty plea if he wanted to pursue any legal theories about the differences between the two crimes. Panuski declined. In sum, Panuski has no right to choose the crime he prefers.[2] He pled guilty to dealing in child pornography and was sentenced for committing those crimes.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

[2] *Albury v. State*, 551 A.2d 53, 61 (Del. 1988).